

PUBLIC LAW 104-106—FEB. 10, 1996

NATIONAL DEFENSE AUTHORIZATION ACT
FOR FISCAL YEAR 1996

Federal
Acquisition
Reform Act of
1996.
Contracts.
41 USC 251 note.

DIVISION D—FEDERAL ACQUISITION REFORM

SEC. 4001. SHORT TITLE.

This division may be cited as the “Federal Acquisition Reform Act of 1996”.

TITLE XLI—COMPETITION

SEC. 4101. EFFICIENT COMPETITION.

(a) ARMED SERVICES ACQUISITIONS.—Section 2304 of title 10, United States Code, is amended—

- (1) by redesignating subsection (j) as subsection (k); and
- (2) by inserting after subsection (i) the following new subsection (j):

“(j) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

- (1) by redesignating subsection (h) as subsection (i); and
- (2) by inserting after subsection (g) the following new subsection (h):

“(h) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.”.

(c) REVISIONS TO NOTICE THRESHOLDS.—Section 18(a)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(1)(B)) is amended—

(A) by striking out “subsection (f)—” and all that follows through the end of the subparagraph and inserting in lieu thereof “subsection (b); and”; and

(B) by inserting after “property or services” the following: “for a price expected to exceed \$10,000, but not to exceed \$25,000,”.

SEC. 4102. EFFICIENT APPROVAL PROCEDURES.

(a) **ARMED SERVICES ACQUISITIONS.**—Section 2304(f)(1)(B) of title 10, United States Code, is amended—

(1) in clause (i)—

(A) by striking out “\$100,000 (but equal to or less than \$1,000,000)” and inserting in lieu thereof “\$500,000 (but equal to or less than \$10,000,000)”; and

(B) by striking out “(ii), (iii), or (iv)” and inserting in lieu thereof “(ii) or (iii)”; and

(2) in clause (ii)—

(A) by striking out “\$1,000,000 (but equal to or less than \$10,000,000)” and inserting in lieu thereof “\$10,000,000 (but equal to or less than \$50,000,000)”; and

(B) by adding “or” at the end;

(3) by striking out clause (iii); and

(4) by redesignating clause (iv) as clause (iii).

(b) **CIVILIAN AGENCY ACQUISITIONS.**—Section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking out “\$100,000 (but equal to or less than \$1,000,000)” and inserting in lieu thereof “\$500,000 (but equal to or less than \$10,000,000)”; and

(B) by striking out “(ii), (iii), or (iv);” and inserting in lieu thereof “(ii) or (iii); and”; and

(2) in clause (ii)—

(A) by striking out “\$1,000,000 (but equal to or less than \$10,000,000)” and inserting in lieu thereof “\$10,000,000 (but equal to or less than \$50,000,000)”; and

(B) by striking out the semicolon after “civilian” and inserting in lieu thereof a comma; and

(3) in clause (iii), by striking out “\$10,000,000” and inserting in lieu thereof “\$50,000,000”.

SEC. 4103. EFFICIENT COMPETITIVE RANGE DETERMINATIONS.

(a) **ARMED SERVICES ACQUISITIONS.**—Paragraph (4) of 2305(b) of title 10, United States Code, is amended—

(1) in subparagraph (C), by striking out “(C)”, by transferring the text to the end of subparagraph (B), and in that text by striking out “Subparagraph (B)” and inserting in lieu thereof “This subparagraph”; and

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting before subparagraph (C) (as so redesignated) the following new subparagraph (B):

“(B) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subparagraph (A)(i) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number

that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b(d)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting before paragraph (3) (as so redesignated) the following new paragraph (2):

“(2) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under paragraph (1)(A) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.”.

SEC. 4104. PREAWARD DEBRIEFINGS.

(a) ARMED SERVICES ACQUISITIONS.—Section 2305(b) of title 10, United States Code, is amended—

(1) by striking out subparagraph (F) of paragraph (5);

(2) by redesignating paragraph (6) as paragraph (9); and

(3) by inserting after paragraph (5) the following new paragraphs:

“(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

“(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) of this section only if that offeror requested and was refused a preaward debriefing under subparagraph (A) of this paragraph.

“(C) The debriefing conducted under this subsection shall include—

“(i) the executive agency’s evaluation of the significant elements in the offeror’s offer;

“(ii) a summary of the rationale for the offeror’s exclusion; and

“(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

“(D) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors’ proposals.

“(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.

“(8) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution tech-

niques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—Section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b) is amended—

(1) by striking out paragraph (6) of subsection (e);

(2) by redesignating subsections (f), (g), (h), and (i) as subsections (i), (j), (k), and (l), respectively; and

(3) by inserting after subsection (e) the following new subsections:

“(f)(1) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection decision), the excluded offeror may request in writing, within 3 days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

“(2) The contracting officer is required to debrief an excluded offeror in accordance with subsection (e) of this section only if that offeror requested and was refused a preaward debriefing under paragraph (1) of this subsection.

“(3) The debriefing conducted under this subsection shall include—

“(A) the executive agency’s evaluation of the significant elements in the offeror’s offer;

“(B) a summary of the rationale for the offeror’s exclusion; and

“(C) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

“(4) The debriefing conducted pursuant to this subsection may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors’ proposals.

“(g) The contracting officer shall include a summary of any debriefing conducted under subsection (e) or (f) in the contract file.

“(h) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.”.

SEC. 4105. DESIGN-BUILD SELECTION PROCEDURES.

(a) ARMED SERVICES ACQUISITIONS.—(1) Chapter 137 of title 10, United States Code, is amended by inserting after section 2305 the following new section:

“§ 2305a. Design-build selection procedures

“(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (41 U.S.C. 541 et seq.) is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

“(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

“(1) The extent to which the project requirements have been adequately defined.

“(2) The time constraints for delivery of the project.

“(3) The capability and experience of potential contractors.

“(4) The suitability of the project for use of the two-phase selection procedures.

“(5) The capability of the agency to manage the two-phase selection process.

“(6) Other criteria established by the agency.

“(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

“(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government’s requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government’s needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).

“(2) The contracting officer solicits phase-one proposals that—

“(A) include information on the offeror’s—

“(i) technical approach; and

“(ii) technical qualifications; and

“(B) do not include—

“(i) detailed design information; or

“(ii) cost or price information.

“(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror’s team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation estab-

lishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

“(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

“(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

“(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4) of section 2305(a) of this title.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

“(5) The agency awards the contract in accordance with section 2305(b)(4) of this title.

“(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government’s interest and is consistent with the purposes and objectives of the two-phase selection process.

“(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

“(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

“(2) regarding the factors that may be used in selecting contractors; and

“(3) providing for a uniform approach to be used Government-wide.”.

(2) The table of sections at the beginning of chapter 137 of such title is amended by adding after the item relating to section 2305 the following new item:

“2305a. Design-build selection procedures.”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) is amended by inserting after section 303L the following new section:

“SEC. 303M. DESIGN-BUILD SELECTION PROCEDURES.

41 USC 253m.

“(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (title IX of this Act) is used or another acquisition procedure authorized by law is used, the head of an executive agency shall use the two-phase selection procedures authorized

in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

“(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

“(1) The extent to which the project requirements have been adequately defined.

“(2) The time constraints for delivery of the project.

“(3) The capability and experience of potential contractors.

“(4) The suitability of the project for use of the two-phase selection procedures.

“(5) The capability of the agency to manage the two-phase selection process.

“(6) Other criteria established by the agency.

“(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

“(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government’s requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government’s needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.).

“(2) The contracting officer solicits phase-one proposals that—

“(A) include information on the offeror’s—

“(i) technical approach; and

“(ii) technical qualifications; and

“(B) do not include—

“(i) detailed design information; or

“(ii) cost or price information.

“(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror’s team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

“(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

“(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

“(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with subsections (b), (c), and (d) of section 303A.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

“(5) The agency awards the contract in accordance with section 303B of this title.

“(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government’s interest and is consistent with the purposes and objectives of the two-phase selection process.

“(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

“(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

“(2) regarding the factors that may be used in selecting contractors; and

“(3) providing for a uniform approach to be used Government-wide.”.

(2) The table of sections at the beginning of such Act is amended by inserting after the item relating to section 303L the following new item:

“Sec. 303M. Design-build selection procedures.”.

TITLE XLII—COMMERCIAL ITEMS

SEC. 4201. COMMERCIAL ITEM EXCEPTION TO REQUIREMENT FOR CERTIFIED COST OR PRICING DATA.

(a) ARMED SERVICES ACQUISITIONS.—(1) Subsections (b), (c), and (d) of section 2306a of title 10, United States Code, are amended to read as follows:

“(b) EXCEPTIONS.—

“(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

“(A) for which the price agreed upon is based on—

“(i) adequate price competition; or

“(ii) prices set by law or regulation;

“(B) for the acquisition of a commercial item; or

“(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

“(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

“(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

“(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

“(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

“(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

“(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

“(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this paragraph.

“(d) SUBMISSION OF OTHER INFORMATION.—

“(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the data submitted shall include, at a minimum, appropriate information on the prices at which the same item or similar

items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

“(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

“(A) Reasonable limitations on requests for sales data relating to commercial items.

“(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

“(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.”.

(2) Section 2306a of such title is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Subsections (b), (c) and (d) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b) are amended to read as follows:

“(b) EXCEPTIONS.—

“(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or a modification of a contract or subcontract—

“(A) for which the price agreed upon is based on—

“(i) adequate price competition; or

“(ii) prices set by law or regulation;

“(B) for the acquisition of a commercial item; or

“(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

“(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

“(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

“(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

“(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

“(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required

to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

“(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

“(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate the functions under this paragraph.

“(d) SUBMISSION OF OTHER INFORMATION.—

“(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the data submitted shall include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

“(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

“(A) Reasonable limitations on requests for sales data relating to commercial items.

“(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

“(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.”.

(2) Section 304A of such Act is further amended—

(A) by striking out subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

SEC. 4202. APPLICATION OF SIMPLIFIED PROCEDURES TO CERTAIN COMMERCIAL ITEMS.

(a) ARMED SERVICES ACQUISITIONS.—(1) Section 2304(g) of title 10, United States Code, is amended—

(A) in paragraph (1), by striking out “shall provide for special simplified procedures for purchases of” and all that follows through the end of the paragraph and inserting in lieu thereof the following: “shall provide for—

“(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

“(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.”; and

(B) by adding at the end the following new paragraph:

“(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).”.

(2) Section 2305 of title 10, United States Code, is amended in subsection (a)(2) by inserting after “(other than for” the following: “a procurement for commercial items using special simplified procedures or”.

(b) CIVILIAN AGENCY ACQUISITIONS.—(1) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)) is amended—

(A) in paragraph (1), by striking out “shall provide for special simplified procedures for purchases of” and all that follows through the end of the paragraph and inserting in lieu thereof the following: “shall provide for—

“(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

“(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.”; and

(B) by adding at the end the following new paragraph:

“(5) An executive agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(g) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).”.

(2) Section 303A of such Act (41 U.S.C. 253a) is amended in subsection (b) by inserting after “(other than for” the following: “a procurement for commercial items using special simplified procedures or”.

(c) ACQUISITIONS GENERALLY.—Section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427) is amended—

(1) in subsection (a), by striking out “shall provide for special simplified procedures for purchases of” and all that follows through the end of the subsection and inserting in lieu thereof the following: “shall provide for—

“(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

“(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which

the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.”; and

(2) by adding at the end the following new subsection:

“(g) SPECIAL RULES FOR COMMERCIAL ITEMS.—The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items using special simplified procedures, an executive agency—

Notice
Publication.

“(1) shall publish a notice in accordance with section 18 and, as provided in subsection (b)(4) of such section, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

“(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304 of title 10, United States Code, or section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253), as applicable; and

“(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.”.

(d) SIMPLIFIED NOTICE.—(1) Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) is amended—

(A) in subsection (a)(6), by inserting before “submission” the following: “issuance of solicitations and the”; and

(B) in subsection (b)(6), by striking out “threshold—” and inserting in lieu thereof “threshold, or a contract for the procurement of commercial items using special simplified procedures—”.

10 USC 2304
note.

(e) EFFECTIVE DATE.—The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949, and section 31(a) of the Office of Federal Procurement Policy Act, as amended by this section, shall expire three years after the date on which such amendments take effect pursuant to section 4401(b). Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.

SEC. 4203. INAPPLICABILITY OF CERTAIN PROCUREMENT LAWS TO COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS.

(a) LAWS LISTED IN THE FAR.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end the following:

41 USC 431.

“SEC. 35. COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEM ACQUISITIONS: LISTS OF INAPPLICABLE LAWS IN FEDERAL ACQUISITION REGULATION.

“(a) LISTS OF INAPPLICABLE PROVISIONS OF LAW.—(1) The Federal Acquisition Regulation shall include a list of provisions of law that are inapplicable to contracts for the procurement of commercially available off-the-shelf items.

“(2) A provision of law that, pursuant to paragraph (3), is properly included on a list referred to in paragraph (1) may not be construed as being applicable to contracts referred to in paragraph (1). Nothing in this section shall be construed to render

inapplicable to such contracts any provision of law that is not included on such list.

“(3) A provision of law described in subsection (b) shall be included on the list of inapplicable provisions of law required by paragraph (1) unless the Administrator for Federal Procurement Policy makes a written determination that it would not be in the best interest of the United States to exempt such contracts from the applicability of that provision of law. Nothing in this section shall be construed as modifying or superseding, or as being intended to impair or restrict authorities or responsibilities under—

“(A) section 15 of the Small Business Act (15 U.S.C. 644);

or

“(B) bid protest procedures developed under the authority of subchapter V of chapter 35 of title 31, United States Code; subsections (e) and (f) of section 2305 of title 10, United States Code; or subsections (h) and (i) of section 303B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253b).

“(b) COVERED LAW.—Except as provided in subsection (a)(3), the list referred to in subsection (a)(1) shall include each provision of law that, as determined by the Administrator, imposes on persons who have been awarded contracts by the Federal Government for the procurement of commercially available off-the-shelf items Government-unique policies, procedures, requirements, or restrictions for the procurement of property or services, except the following:

“(1) A provision of law that provides for criminal or civil penalties.

“(2) A provision of law that specifically refers to this section and provides that, notwithstanding this section, such provision of law shall be applicable to contracts for the procurement of commercial off-the-shelf items.

“(c) DEFINITION.—(1) As used in this section, the term ‘commercially available off-the-shelf item’ means, except as provided in paragraph (2), an item that—

“(A) is a commercial item (as described in section 4(12)(A));

“(B) is sold in substantial quantities in the commercial marketplace; and

“(C) is offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.

“(2) The term ‘commercially available off-the-shelf item’ does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 34 the following:

“Sec. 35. Commercially available off-the-shelf item acquisitions: lists of inapplicable laws in Federal Acquisition Regulation.”.

SEC. 4204. AMENDMENT OF COMMERCIAL ITEMS DEFINITION.

Section 4(12)(F) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(F)) is amended by inserting “or market” after “catalog”.

SEC. 4205. INAPPLICABILITY OF COST ACCOUNTING STANDARDS TO CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.

Paragraph (2)(B) of section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)) is amended—

(1) by striking out clause (i) and inserting in lieu thereof the following:

“(i) Contracts or subcontracts for the acquisition of commercial items.”; and

(2) by striking out clause (iii).

TITLE XLIII—ADDITIONAL REFORM PROVISIONS

Subtitle A—Additional Acquisition Reform Provisions

SEC. 4301. ELIMINATION OF CERTAIN CERTIFICATION REQUIREMENTS.

(a) **ELIMINATION OF CERTAIN STATUTORY CERTIFICATION REQUIREMENTS.**—(1) Section 2410b of title 10, United States Code, is amended in paragraph (2) by striking out “certification and”.

(2) Section 1352(b)(2) of title 31, United States Code, is amended—

(A) by striking out subparagraph (C); and

(B) by inserting “and” after the semicolon at the end of subparagraph (A).

(3) Section 5152 of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) is amended—

(A) in subsection (a)(1), by striking out “has certified to the contracting agency that it will” and inserting in lieu thereof “agrees to”;

(B) in subsection (a)(2), by striking out “contract includes a certification by the individual” and inserting in lieu thereof “individual agrees”; and

(C) in subsection (b)(1)—

(i) by striking out subparagraph (A);

(ii) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph by striking out “such certification by failing to carry out”; and

(iii) by redesignating subparagraph (C) as subparagraph (B).

(b) **ELIMINATION OF CERTAIN REGULATORY CERTIFICATION REQUIREMENTS.**—

(1) **CURRENT CERTIFICATION REQUIREMENTS.**—(A) Not later than 210 days after the date of the enactment of this Act, the Administrator for Federal Procurement Policy shall issue for public comment a proposal to amend the Federal Acquisition Regulation to remove from the Federal Acquisition Regulation certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification requirement from the proposal only if—

(i) the Federal Acquisition Regulatory Council provides the Administrator with a written justification for the

Public comment.
41 USC 425 note.

requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

(ii) the Administrator approves in writing the retention of the certification requirement.

(B)(i) Not later than 210 days after the date of the enactment of this Act, the head of each executive agency that has agency procurement regulations containing one or more certification requirements for contractors and offerors that are not specifically imposed by statute shall issue for public comment a proposal to amend the regulations to remove the certification requirements. The head of the executive agency may omit such a certification requirement from the proposal only if—

Public comment.

(I) the senior procurement executive for the executive agency provides the head of the executive agency with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and

(II) the head of the executive agency approves in writing the retention of such certification requirement.

(ii) For purposes of clause (i), the term “head of the executive agency” with respect to a military department means the Secretary of Defense.

(2) FUTURE CERTIFICATION REQUIREMENTS.—(A) Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is amended—

(i) by amending the heading to read as follows:

“SEC. 29. CONTRACT CLAUSES AND CERTIFICATIONS.”;

(ii) by inserting “(a) NONSTANDARD CONTRACT CLAUSES.—” before “The Federal Acquisition”; and

(iii) by adding at the end the following new subsection:

“(c) PROHIBITION ON CERTIFICATION REQUIREMENTS.—(1) A requirement for a certification by a contractor or offeror may not be included in the Federal Acquisition Regulation unless—

“(A) the certification requirement is specifically imposed by statute; or

“(B) written justification for such certification requirement is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

“(2)(A) A requirement for a certification by a contractor or offeror may not be included in a procurement regulation of an executive agency unless—

“(i) the certification requirement is specifically imposed by statute; or

“(ii) written justification for such certification requirement is provided to the head of the executive agency by the senior procurement executive of the agency, and the head of the executive agency approves in writing the inclusion of such certification requirement.

“(B) For purposes of subparagraph (A), the term ‘head of the executive agency’ with respect to a military department means the Secretary of Defense.”.

(B) The item relating to section 29 in the table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) (41 U.S.C. 401 note) is amended to read as follows:

“Sec. 29. Contract clauses and certifications.”.

(c) POLICY OF CONGRESS.—Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425) is further amended by adding after subsection (a) the following new subsection:

“(b) CONSTRUCTION OF CERTIFICATION REQUIREMENTS.—A provision of law may not be construed as requiring a certification by a contractor or offeror in a procurement made or to be made by the Federal Government unless that provision of law specifically provides that such a certification shall be required.”.

SEC. 4302. AUTHORITIES CONDITIONED ON FACNET CAPABILITY.

(a) COMMENCEMENT AND EXPIRATION OF AUTHORITY TO CONDUCT CERTAIN TESTS OF PROCUREMENT PROCEDURES.—Subsection (j) of section 5061 of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 413 note; 108 Stat. 3355) is amended to read as follows:

“(j) COMMENCEMENT AND EXPIRATION OF AUTHORITY.—The authority to conduct a test under subsection (a) in an agency and to award contracts under such a test shall take effect on January 1, 1997, and shall expire on January 1, 2001. A contract entered into before such authority expires in an agency pursuant to a test shall remain in effect, in accordance with the terms of the contract, the notwithstanding of expiration the authority to conduct the test under this section.”.

(b) USE OF SIMPLIFIED ACQUISITION PROCEDURES.—Subsection (e) of section 31 of the Office of Federal Procurement Policy Act (41 U.S.C. 427) is amended—

(1) by striking out “ACQUISITION PROCEDURES.—” and all that follows through “(B) The simplified acquisition” in paragraph (2)(B) and inserting in lieu thereof “ACQUISITION PROCEDURES.—The simplified acquisition”; and

(2) by striking out “pursuant to this section” in the remaining text and inserting in lieu thereof “pursuant to section 2304(g)(1)(A) of title 10, United States Code, section 303(g)(1)(A) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(A)), and subsection (a)(1) of this section”.

SEC. 4303. INTERNATIONAL COMPETITIVENESS.

(a) ADDITIONAL AUTHORITY TO WAIVE RESEARCH, DEVELOPMENT, AND PRODUCTION COSTS.—Subject to subsection (b), section 21(e)(2) of the Arms Export Control Act (22 U.S.C. 2761(e)(2)) is amended—

(1) by inserting “(A)” after “(2)”; and

(2) by adding at the end the following new subparagraphs:

“(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

“(i) imposition of the charge or charges likely would result in the loss of the sale; or

“(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting

increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.”.

(b) CONDITIONS.—Subsection (a) shall be effective only if—

22 USC 2761
note.

(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

(2) there is enacted qualifying offsetting legislation.

(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation.

22 USC 2761
note.

(d) DEFINITIONS.—For purposes of this section:

22 USC 2761
note.

(1) The term “qualifying offsetting legislation” means legislation that includes provisions that—

(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

(C) are included in full on the PayGo scorecard.

(2) The term “PayGo scorecard” means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 4304. PROCUREMENT INTEGRITY.

(a) AMENDMENT OF PROCUREMENT INTEGRITY PROVISION.—Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is amended to read as follows:

“SEC. 27. RESTRICTIONS ON DISCLOSING AND OBTAINING CONTRACTOR BID OR PROPOSAL INFORMATION OR SOURCE SELECTION INFORMATION.

41 USC 423.

“(a) PROHIBITION ON DISCLOSING PROCUREMENT INFORMATION.—(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

“(2) Paragraph (1) applies to any person who—

“(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

“(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

“(b) PROHIBITION ON OBTAINING PROCUREMENT INFORMATION.—A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

“(c) ACTIONS REQUIRED OF PROCUREMENT OFFICERS WHEN CONTACTED BY OFFERORS REGARDING NON-FEDERAL EMPLOYMENT.—

(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

Reports.

“(A) promptly report the contact in writing to the official’s supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

“(B)(i) reject the possibility of non-Federal employment; or

“(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18, United States Code, and applicable agency regulations on the grounds that—

“(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

“(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

Public
information.

“(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5, United States Code, under subsection (b)(1) of such section may be withheld from disclosure to the public.

“(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e).

“(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e).

“(d) PROHIBITION ON FORMER OFFICIAL’S ACCEPTANCE OF COMPENSATION FROM CONTRACTOR.—(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

“(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

“(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

“(C) personally made for the Federal agency—

“(i) a decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

“(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

“(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

“(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

“(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

“(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

“(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e).

“(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

“(e) PENALTIES AND ADMINISTRATIVE ACTIONS.—

“(1) CRIMINAL PENALTIES.—Whoever engages in conduct constituting a violation of subsection (a) or (b) for the purpose of either—

“(A) exchanging the information covered by such subsection for anything of value, or

“(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 5 years or fined as provided under title 18, United States Code, or both.

“(2) CIVIL PENALTIES.—The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d). Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation

plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

“(3) ADMINISTRATIVE ACTIONS.—(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d), the Federal agency shall consider taking one or more of the following actions, as appropriate:

“(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

“(ii) Rescission of a contract with respect to which—

“(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

“(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

“(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

“(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5, United States Code, or other applicable law or regulation.

“(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

“(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) affects the present responsibility of a Government contractor or subcontractor.

“(f) DEFINITIONS.—As used in this section:

“(1) The term ‘contractor bid or proposal information’ means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

“(A) Cost or pricing data (as defined by section 2306a(h) of title 10, United States Code, with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section).

“(B) Indirect costs and direct labor rates.

“(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

“(D) Information marked by the contractor as ‘contractor bid or proposal information’, in accordance with applicable law or regulation.

“(2) The term ‘source selection information’ means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information

has not been previously made available to the public or disclosed publicly:

“(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

“(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

“(C) Source selection plans.

“(D) Technical evaluation plans.

“(E) Technical evaluations of proposals.

“(F) Cost or price evaluations of proposals.

“(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

“(H) Rankings of bids, proposals, or competitors.

“(I) The reports and evaluations of source selection panels, boards, or advisory councils.

“(J) Other information marked as ‘source selection information’ based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“(3) The term ‘Federal agency’ has the meaning provided such term in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

“(4) The term ‘Federal agency procurement’ means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

“(5) The term ‘contracting officer’ means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

“(6) The term ‘protest’ means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31, United States Code.

“(7) The term ‘official’ means the following:

“(A) An officer, as defined in section 2104 of title 5, United States Code.

“(B) An employee, as defined in section 2105 of title 5, United States Code.

“(C) A member of the uniformed services, as defined in section 2101(3) of title 5, United States Code.

“(g) LIMITATION ON PROTESTS.—No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of subsection (a), (b), (c), or (d), nor may the Comptroller General of the United States consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement, no later than 14 days after the person first discovered the possible violation, the information that the person believed constitutes evidence of the offense.

“(h) SAVINGS PROVISIONS.—This section does not—

“(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

“(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

“(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

“(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur;

“(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

“(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

“(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation.”.

(b) REPEALS.—The following provisions of law are repealed:

(1) Sections 2397, 2397a, 2397b, and 2397c of title 10, United States Code.

(2) Section 33 of the Federal Energy Administration Act of 1974 (15 U.S.C. 789).

(3) Section 281 of title 18, United States Code.

(4) Subsection (c) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

(5) The first section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5918).

(6) Part A of title VI of the Department of Energy Organization Act and its catchline (42 U.S.C. 7211, 7212, and 7218).

(7) Section 308 of the Energy Research and Development Administration Appropriation Authorization Act for Fiscal Year 1977 (42 U.S.C. 5816a).

(8) Section 522 of the Energy Policy and Conservation Act (42 U.S.C. 6392).

(c) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by striking out the items relating to sections 2397, 2397a, 2397b, and 2397c.

(2) The table of sections at the beginning of chapter 15 of title 18, United States Code, is amended by striking out the item relating to section 281.

(3) Section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) is amended by redesignating subsections (d), (e), and (f) as subsections (c), (d), (e), and (f), respectively.

(4) The table of contents for the Department of Energy Organization Act is amended by striking out the items relating to part A of title VI including sections 601 through 603.

(5) The table of contents for the Energy Policy and Conservation Act is amended by striking out the item relating to section 522.

SEC. 4305. FURTHER ACQUISITION STREAMLINING PROVISIONS.

(a) PURPOSE OF OFFICE OF FEDERAL PROCUREMENT POLICY.—

(1) REVISED STATEMENT OF PURPOSE.—Section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404) is amended to read as follows:

“(a) There is in the Office of Management and Budget an Office of Federal Procurement Policy (hereinafter referred to as the ‘Office’) to provide overall direction of Government-wide procurement policies, regulations, procedures, and forms for executive agencies and to promote economy, efficiency, and effectiveness in the procurement of property and services by the executive branch of the Federal Government.”.

(2) REPEAL OF FINDINGS, POLICIES, AND PURPOSES.—Sections 2 and 3 of such Act (41 U.S.C. 401 and 402) are repealed.

(b) REPEAL OF REPORT REQUIREMENT.—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 407) is repealed.

(c) OBSOLETE PROVISIONS.—

(1) RELATIONSHIP TO FORMER REGULATIONS.—Section 10 of the Office of Federal Procurement Policy Act (41 U.S.C. 409) is repealed.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 11 of such Act (41 U.S.C. 410) is amended to read as follows:

“SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated for the Office of Federal Procurement Policy each fiscal year such sums as may be necessary for carrying out the responsibilities of that office for such fiscal year.”.

(d) CLERICAL AMENDMENTS.—The table of contents for the Office of Federal Procurement Policy Act (contained in section 1(b)) is amended by striking out the items relating to sections 2, 3, 8, and 10.

SEC. 4306. VALUE ENGINEERING FOR FEDERAL AGENCIES.

(a) USE OF VALUE ENGINEERING.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4203, is further amended by adding at the end the following new section:

“SEC. 36. VALUE ENGINEERING.

41 USC 432.

“(a) IN GENERAL.—Each executive agency shall establish and maintain cost-effective value engineering procedures and processes.

“(b) DEFINITION.—As used in this section, the term ‘value engineering’ means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life cycle costs.”.

(b) CLERICAL AMENDMENT.—The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

“Sec. 36. Value engineering.”.

SEC. 4307. ACQUISITION WORKFORCE.

(a) ACQUISITION WORKFORCE.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), as amended by section 4306, is further amended by adding at the end the following new section:

41 USC 433.

“SEC. 37. ACQUISITION WORKFORCE.

“(a) APPLICABILITY.—This section does not apply to an executive agency that is subject to chapter 87 of title 10, United States Code.

“(b) MANAGEMENT POLICIES.—

“(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator for Federal Procurement Policy, shall establish policies and procedures for the effective management (including accession, education, training, career development, and performance incentives) of the acquisition workforce of the agency. The development of acquisition workforce policies under this section shall be carried out consistent with the merit system principles set forth in section 2301(b) of title 5, United States Code.

“(2) UNIFORM IMPLEMENTATION.—The head of each executive agency shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established are uniform in their implementation throughout the agency.

“(3) GOVERNMENT-WIDE POLICIES AND EVALUATION.—The Administrator shall issue policies to promote uniform implementation of this section by executive agencies, with due regard for differences in program requirements among agencies that may be appropriate and warranted in view of the agency mission. The Administrator shall coordinate with the Deputy Director for Management of the Office of Management and Budget to ensure that such policies are consistent with the policies and procedures established and enhanced system of incentives provided pursuant to section 5051(c) of the Federal Acquisition Streamlining Act of 1994 (41 U.S.C. 263 note). The Administrator shall evaluate the implementation of the provisions of this section by executive agencies.

“(c) SENIOR PROCUREMENT EXECUTIVE AUTHORITIES AND RESPONSIBILITIES.—Subject to the authority, direction, and control of the head of an executive agency, the senior procurement executive of the agency shall carry out all powers, functions, and duties of the head of the agency with respect to implementation of this section. The senior procurement executive shall ensure that the policies of the head of the executive agency established in accordance with this section are implemented throughout the agency.

“(d) MANAGEMENT INFORMATION SYSTEMS.—The Administrator shall ensure that the heads of executive agencies collect and maintain standardized information on the acquisition workforce related to implementation of this section. To the maximum extent practicable, such data requirements shall conform to standards estab-

lished by the Office of Personnel Management for the Central Personnel Data File.

“(e) APPLICABILITY TO ACQUISITION WORKFORCE.—The programs established by this section shall apply to the acquisition workforce of each executive agency. For purposes of this section, the acquisition workforce of an agency consists of all employees serving in acquisition positions listed in subsection (g)(1)(A).

“(f) CAREER DEVELOPMENT.—

“(1) CAREER PATHS.—The head of each executive agency shall ensure that appropriate career paths for personnel who desire to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression to the most senior acquisition positions. The head of each executive agency shall make information available on such career paths.

“(2) CRITICAL DUTIES AND TASKS.—For each career path, the head of each executive agency shall identify the critical acquisition-related duties and tasks in which, at minimum, employees of the agency in the career path shall be competent to perform at full performance grade levels. For this purpose, the head of the executive agency shall provide appropriate coverage of the critical duties and tasks identified by the Director of the Federal Acquisition Institute.

“(3) MANDATORY TRAINING AND EDUCATION.—For each career path, the head of each executive agency shall establish requirements for the completion of course work and related on-the-job training in the critical acquisition-related duties and tasks of the career path. The head of each executive agency shall also encourage employees to maintain the currency of their acquisition knowledge and generally enhance their knowledge of related acquisition management disciplines through academic programs and other self-developmental activities.

“(4) PERFORMANCE INCENTIVES.—The head of each executive agency shall provide for an enhanced system of incentives for the encouragement of excellence in the acquisition workforce which rewards performance of employees that contribute to achieving the agency’s performance goals. The system of incentives shall include provisions that—

“(A) relate pay to performance (including the extent to which the performance of personnel in such workforce contributes to achieving the cost goals, schedule goals, and performance goals established for acquisition programs pursuant to section 313(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 263(b))); and

“(B) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such workforce contributes to achieving such cost goals, schedule goals, and performance goals.

“(g) QUALIFICATION REQUIREMENTS.—

“(1) IN GENERAL.—(A) Subject to paragraph (2), the Administrator shall establish qualification requirements, including education requirements, for the following positions:

“(i) Entry-level positions in the General Schedule Contracting series (GS-1102).

“(ii) Senior positions in the General Schedule Contracting series (GS-1102).

“(iii) All positions in the General Schedule Purchasing series (GS-1105).

“(iv) Positions in other General Schedule series in which significant acquisition-related functions are performed.

“(B) Subject to paragraph (2), the Administrator shall prescribe the manner and extent to which such qualification requirements shall apply to any person serving in a position described in subparagraph (A) at the time such requirements are established.

“(2) RELATIONSHIP TO REQUIREMENTS APPLICABLE TO DEFENSE ACQUISITION WORKFORCE.—The Administrator shall establish qualification requirements and make prescriptions under paragraph (1) that are comparable to those established for the same or equivalent positions pursuant to chapter 87 of title 10, United States Code, with appropriate modifications.

“(3) APPROVAL OF REQUIREMENTS.—The Administrator shall submit any requirement established or prescription made under paragraph (1) to the Director of the Office of Personnel Management for approval. If the Director does not disapprove a requirement or prescription within 30 days after the date on which the Director receives it, the requirement or prescription is deemed to be approved by the Director.

“(h) EDUCATION AND TRAINING.—

“(1) FUNDING LEVELS.—(A) The head of an executive agency shall set forth separately the funding levels requested for education and training of the acquisition workforce in the budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

“(B) Funds appropriated for education and training under this section may not be obligated for any other purpose.

“(2) TUITION ASSISTANCE.—The head of an executive agency may provide tuition reimbursement in education (including a full-time course of study leading to a degree) in accordance with section 4107 of title 5, United States Code, for personnel serving in acquisition positions in the agency.”

(2) The table of contents for such Act, contained in section 1(b), is amended by adding at the end the following new item:

“Sec. 37. Acquisition workforce.”.

(b) ADDITIONAL AMENDMENTS.—Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405), is amended—

(1) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) (as transferred by section 4321(h)(1)) as paragraphs (7), (8), (9), (10), (11), (12), and (13), respectively;

(2) in paragraph (5)—

(A) in subparagraph (A), by striking out “Government-wide career management programs for a professional procurement work force” and inserting in lieu thereof “the development of a professional acquisition workforce Government-wide”; and

(B) in subparagraph (B)—

(i) by striking out “procurement by the” and inserting in lieu thereof “acquisition by the”;

(ii) by striking out “and” at the end of the subparagraph; and

(iii) by striking out subparagraph (C) and inserting in lieu thereof the following:

“(C) collect data and analyze acquisition workforce data from the Office of Personnel Management, the heads of executive agencies, and, through periodic surveys, from individual employees;

“(D) periodically analyze acquisition career fields to identify critical competencies, duties, tasks, and related academic prerequisites, skills, and knowledge;

“(E) coordinate and assist agencies in identifying and recruiting highly qualified candidates for acquisition fields;

“(F) develop instructional materials for acquisition personnel in coordination with private and public acquisition colleges and training facilities;

“(G) evaluate the effectiveness of training and career development programs for acquisition personnel;

“(H) promote the establishment and utilization of academic programs by colleges and universities in acquisition fields;

“(I) facilitate, to the extent requested by agencies, inter-agency intern and training programs; and

“(J) perform other career management or research functions as directed by the Administrator.”; and

(3) by inserting before paragraph (7) (as so redesignated) the following new paragraph (6):

“(6) administering the provisions of section 37;”.

SEC. 4308. DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES.

10 USC 1701
note.

(a) **COMMENCEMENT.**—The Secretary of Defense is encouraged to take such steps as may be necessary to provide for the commencement of a demonstration project, the purpose of which would be to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense.

(b) **TERMS AND CONDITIONS.**—

(1) **IN GENERAL.**—Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5, United States Code, and all other provisions of such title that apply with respect to any demonstration project under such section.

(2) **EXCEPTIONS.**—Subject to paragraph (3), in applying section 4703 of title 5, United States Code, with respect to a demonstration project described in subsection (a)—

(A) “180 days” in subsection (b)(4) of such section shall be deemed to read “120 days”;

(B) “90 days” in subsection (b)(6) of such section shall be deemed to read “30 days”; and

(C) subsection (d)(1)(A) of such section shall be disregarded.

(3) **CONDITION.**—Paragraph (2) shall not apply with respect to a demonstration project unless it—

(A) involves only the acquisition workforce of the Department of Defense (or any part thereof); and

(B) commences during the 3-year period beginning on the date of the enactment of this Act.

(c) DEFINITION.—For purposes of this section, the term “acquisition workforce” refers to the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of title 10, United States Code.

40 USC 481 note.

SEC. 4309. COOPERATIVE PURCHASING.

(a) DELAY IN OPENING CERTAIN FEDERAL SUPPLY SCHEDULES TO USE BY STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS.—The Administrator of General Services may not use the authority of section 201(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(b)(2)) to provide for the use of Federal supply schedules of the General Services Administration until after the later of—

(1) the date on which the 18-month period beginning on the date of the enactment of this Act expires; or

(2) the date on which all of the following conditions are met:

(A) The Administrator has considered the report of the Comptroller General required by subsection (b).

(B) The Administrator has submitted comments on such report to Congress as required by subsection (c).

(C) A period of 30 days after the date of submission of such comments to Congress has expired.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the Administrator of General Services and to Congress a report on the implementation of section 201(b) of the Federal Property and Administrative Services Act of 1949. The report shall include the following:

(1) An assessment of the effect on industry, including small businesses and local dealers, of providing for the use of Federal supply schedules by the entities described in section 201(b)(2)(A) of the Federal Property and Administrative Services Act of 1949.

(2) An assessment of the effect on such entities of providing for the use of Federal supply schedules by them.

(c) COMMENTS ON REPORT BY ADMINISTRATOR.—Not later than 30 days after receiving the report of the Comptroller General required by subsection (b), the Administrator of General Services shall submit to Congress comments on the report, including the Administrator’s comments on whether the Administrator plans to provide any Federal supply schedule for the use of any entity described in section 201(b)(2)(A) of the Federal Property and Administrative Services Act of 1949.

(d) CALCULATION OF 30-DAY PERIOD.—For purposes of subsection (a)(2)(C), the calculation of the 30-day period shall exclude Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days.

SEC. 4310. PROCUREMENT NOTICE TECHNICAL AMENDMENT.

Section 18(c)(1)(E) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)(1)(E)) is amended by inserting after “requirements contract” the following: “, a task order contract, or a delivery order contract”.

SEC. 4311. MICRO-PURCHASES WITHOUT COMPETITIVE QUOTATIONS.

Section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428), as redesignated by section 4304(c)(3), is amended by striking out “the contracting officer” and inserting in lieu thereof “an employee of an executive agency or a member of the Armed Forces of the United States authorized to do so”.

Subtitle B—Technical Amendments**SEC. 4321. AMENDMENTS RELATED TO FEDERAL ACQUISITION STREAMLINING ACT OF 1994.**

(a) PUBLIC LAW 103–355.—Effective as of October 13, 1994, and as if included therein as enacted, the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3243 et seq.) is amended as follows:

Effective date.
10 USC 2306a
note.

(1) Section 1073 (108 Stat. 3271) is amended by striking out “section 303I” and inserting in lieu thereof “section 303K”.

41 USC 253I.

(2) Section 1202(a) (108 Stat. 3274) is amended by striking out the closing quotation marks and second period at the end of paragraph (2)(B) of the subsection inserted by the amendment made by that section.

10 USC 2306a.

(3) Section 1251(b) (108 Stat. 3284) is amended by striking out “Office of Federal Procurement Policy Act” and inserting in lieu thereof “Federal Property and Administrative Services Act of 1949”.

41 USC 254b
note.

(4) Section 2051(e) (108 Stat. 3304) is amended by striking out the closing quotation marks and second period at the end of subsection (f)(3) in the matter inserted by the amendment made by that section.

41 USC 255.

(5) Section 2101(a)(6)(B)(ii) (108 Stat. 3308) is amended by replacing “regulation” with “regulations” in the first quoted matter.

10 USC 2324.

(6) Section 2351(a) (108 Stat. 3322) is amended by inserting “(1)” before “Section 6”.

41 USC 605.

(7) The heading of section 2352(b) (108 Stat. 3322) is amended by striking out “PROCEDURES TO SMALL BUSINESS GOVERNMENT CONTRACTORS.—” and inserting in lieu thereof “PROCEDURES.—”.

41 USC 605.

(8) Section 3022 (108 Stat. 3333) is amended by striking out “each place” and all that follows through the end of the section and inserting in lieu thereof “in paragraph (1) and ‘, rent,’ after ‘sell’ in paragraph (2).”.

10 USC 2539b.

(9) Section 5092(b) (108 Stat. 3362) is amended by inserting “of paragraph (2)” after “second sentence”.

41 USC 418b.

(10) Section 6005(a) (108 Stat. 3364) is amended by striking out the closing quotation marks and second period at the end of subsection (e)(2) of the matter inserted by the amendment made by that section.

10 USC 2409.

(11) Section 10005(f)(4) (108 Stat. 3409) is amended in the second matter in quotation marks by striking out “SEC. 5. This Act” and inserting in lieu thereof “SEC. 7. This title”.

41 USC 10a note.

(b) TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) Section 2220(b) is amended by striking out “the date of the enactment of the Federal Acquisition Streamlining Act of 1994” and inserting in lieu thereof “October 13, 1994”.

(2)(A) The section 2247 added by section 7202(a)(1) of Public Law 103-355 (108 Stat. 3379) is redesignated as section 2249.

(B) The item relating to that section in the table of sections at the beginning of subchapter I of chapter 134 is revised to conform to the redesignation made by subparagraph (A).

(3) Section 2302(3)(K) is amended by adding a period at the end.

(4) Section 2304(f)(2)(D) is amended by striking out “the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O’Day Act,” and inserting in lieu thereof “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.).”.

(5) Section 2304(h) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

“(1) The Walsh-Healey Act (41 U.S.C. 35 et seq.).”.

(6)(A) The section 2304a added by section 848(a)(1) of Public Law 103-160 (107 Stat. 1724) is redesignated as section 2304e.

(B) The item relating to that section in the table of sections at the beginning of chapter 137 is revised to conform to the redesignation made by subparagraph (A).

(7) Section 2306a is amended—

(A) in subsection (d)(2)(A)(ii), by inserting “to” after “The information referred”;

(B) in subsection (e)(4)(B)(ii), by striking out the second comma after “parties”; and

(C) in subsection (i)(3), by inserting “(41 U.S.C. 403(12))” before the period at the end.

(8) Section 2323 is amended—

(A) in subsection (a)(1)(C), by inserting a closing parenthesis after “1135d-5(3))” and after “1059c(b)(1))”;

(B) in subsection (a)(3), by striking out “(issued under” and all that follows through “421(c))”;

(C) in subsection (b), by inserting “(1)” after “AMOUNT.—”; and

(D) in subsection (i)(3), by adding at the end a subparagraph (D) identical to the subparagraph (D) set forth in the amendment made by section 811(e) of Public Law 103-160 (107 Stat. 1702).

(9) Section 2324 is amended—

(A) in subsection (e)(2)(C)—

(i) by striking out “awarding the contract” at the end of the first sentence; and

(ii) by striking out “title III” and all that follows through “Act)” and inserting in lieu thereof “the Buy American Act (41 U.S.C. 10b-1)”;

(B) in subsection (h)(2), by inserting “the head of the agency or” after “in the case of any contract if”.

(10) Section 2350b is amended—

(A) in subsection (c)(1)—

(i) by striking out “specifically—” and inserting in lieu thereof “specifically prescribes—”; and

(ii) by striking out “prescribe” in each of subparagraphs (A), (B), (C), and (D); and

(B) in subsection (d)(1), by striking out “subcontract to be” and inserting in lieu thereof “subcontract be”.

(11) Section 2372(i)(1) is amended by striking out “section 2324(m)” and inserting in lieu thereof “section 2324(l)”.

(12) Section 2384(b) is amended—

- (A) in paragraph (2)—
 - (i) by striking “items, as” and inserting in lieu thereof “items (as”;
 - (ii) by inserting a closing parenthesis after “403(12))”;
 - (B) in paragraph (3), by inserting a closing parenthesis after “403(11))”.
- (13) Section 2400(a)(5) is amended by striking out “the preceding sentence” and inserting in lieu thereof “this paragraph”.
- (14) Section 2405 is amended—
- (A) in paragraphs (1) and (2) of subsection (a), by striking out “the date of the enactment of the Federal Acquisition Streamlining Act of 1994” and inserting in lieu thereof “October 13, 1994”;
 - (B) in subsection (c)(3)—
 - (i) by striking out “the later of—” and all that follows through “(B)”;
 - (ii) by redesignating clauses (i), (ii), and (iii) as subparagraphs (A), (B), and (C), respectively, and realigning those subparagraphs accordingly.
- (15) Section 2410d(b) is amended by striking out paragraph (3).
- (16) Section 2410g(d)(1) is amended by inserting before the period at the end the following: “(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))”.
- (17) Section 2424(c) is amended—
- (A) by inserting “EXCEPTION.—” after “(c)”;
 - (B) by striking out “drink” the first and third places it appears in the second sentence and inserting in lieu thereof “beverage”.
- (18) Section 2431 is amended—
- (A) in subsection (b)—
 - (i) by striking out “Any report” in the first sentence and inserting in lieu thereof “Any documents”;
 - (ii) by striking out “the report” in paragraph (3) and inserting in lieu thereof “the documents”;
 - (B) in subsection (c), by striking “reporting” and inserting in lieu thereof “documentation”.
- (19) Section 2461(e)(1) is amended by striking out “the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O’Day Act” and inserting in lieu thereof “the Javits-Wagner-O’Day Act (41 U.S.C. 47)”.
- (20) Section 2533(a) is amended by striking out “title III of the Act” and all that follows through “such Act” and inserting in lieu thereof “the Buy American Act (41 U.S.C. 10a)) whether application of such Act”.
- (21) Section 2662(b) is amended by striking out “small purchase threshold” and inserting in lieu thereof “simplified acquisition threshold”.
- (22) Section 2701(i)(1) is amended—
- (A) by striking out “Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the ‘Miller Act,’” and inserting in lieu thereof “Miller Act (40 U.S.C. 270a et seq.)”;

(B) by striking out “such Act of August 24, 1935” and inserting in lieu thereof “the Miller Act”.

(c) SMALL BUSINESS ACT.—The Small Business Act (15 U.S.C. 632 et seq.) is amended as follows:

(1) Section 8(d) (15 U.S.C. 637(d)) is amended—

(A) in paragraph (1), by striking out the second comma after “small business concerns” the first place it appears; and

(B) in paragraph (6)(C), by striking out “and small business concerns owned and controlled by the socially and economically disadvantaged individuals” and inserting in lieu thereof “, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women”.

(2) Section 8(f) (15 U.S.C. 637(f)) is amended by inserting “and” after the semicolon at the end of paragraph (5).

(3) Section 15(g)(2) (15 U.S.C. 644(g)(2)) is amended by striking out the second comma after the first appearance of “small business concerns”.

(d) TITLE 31, UNITED STATES CODE.—Title 31, United States Code, is amended as follows:

(1) Section 3551 is amended—

(A) by striking out “subchapter—” and inserting in lieu thereof “subchapter:”; and

(B) in paragraph (2), by striking out “or proposed contract” and inserting in lieu thereof “or a solicitation or other request for offers”.

(2) Section 3553(b)(3) is amended by striking out “3554(a)(3)” and inserting in lieu thereof “3554(a)(4)”.

(3) Section 3554(b)(2) is amended by striking out “section 3553(d)(2)(A)(i)” and inserting in lieu thereof “section 3553(d)(3)(C)(i)(I)”.

(e) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—The Federal Property and Administrative Services Act of 1949 is amended as follows:

(1) The table of contents in section 1 (40 U.S.C. 471 prec.) is amended—

(A) by striking out the item relating to section 104;

(B) by striking out the item relating to section 201 and inserting in lieu thereof the following:

“Sec. 201. Procurements, warehousing, and related activities.”;

(C) by inserting after the item relating to section 315 the following new item:

“Sec. 316. Merit-based award of grants for research and development.”;

(D) by striking out the item relating to section 603 and inserting in lieu thereof the following:

“Sec. 603. Authorizations for appropriations and transfer authority.”;

and

(E) by inserting after the item relating to section 605 the following new item:

“Sec. 606. Sex discrimination.”.

(2) Section 303(f)(2)(D) (41 U.S.C. 253(f)(2)(D)) is amended by striking out “the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O’Day Act,” and

inserting in lieu thereof “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.),”.

(3) The heading for paragraph (1) of section 304A(c) (41 U.S.C. 254b(c)) is amended by changing each letter that is capitalized (other than the first letter of the first word) to lower case.

(4) Subsection (d)(2)(A)(ii) of section 304A (41 U.S.C. 254b) is amended by inserting “to” after “The information referred”.

(5) Section 304C(a)(2) is amended by striking out “section 304B” and inserting in lieu thereof “section 304A”. 41 USC 254d.

(6) Section 307(b) is amended by striking out “section 305(c)” and inserting in lieu thereof “section 305(d)”. 41 USC 257.

(7) The heading for section 314A (41 U.S.C. 264a) is amended to read as follows:

“SEC. 314A. DEFINITIONS RELATING TO PROCUREMENT OF COMMERCIAL ITEMS.”.

(8) Section 315(b) (41 U.S.C. 265(b)) is amended by striking out “inspector general” both places it appears and inserting in lieu thereof “Inspector General”.

(9) The heading for section 316 (41 U.S.C. 266) is amended by inserting at the end a period.

(f) WALSH-HEALEY ACT.—

(1) The Walsh-Healey Act (41 U.S.C. 35 et seq.) is amended—

(A) by transferring the second section 11 (as added by section 7201(4) of Public Law 103-355) so as to appear after section 10; and 41 USC 43b.

(B) by redesignating the three sections following such section 11 (as so transferred) as sections 12, 13, and 14. 41 USC 35 note, 44, 45.

(2) Such Act is further amended in section 10— 41 USC 43a.

(A) in subsection (b), by striking out “section 1(b)” and inserting in lieu thereof “section 1(a)”; and

(B) in subsection (c), by striking out the comma after “locality”.

(g) ANTI-KICKBACK ACT OF 1986.—Section 7(d) of the Anti-Kickback Act of 1986 (41 U.S.C. 57(d)) is amended—

(1) by striking out “such Act” and inserting in lieu thereof “the Office of Federal Procurement Policy Act”; and

(2) by striking out the second period at the end.

(h) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended as follows:

(1) Section 6 (41 U.S.C. 405) is amended by transferring paragraph (12) of subsection (d) (as such paragraph was redesignated by section 5091(2) of the Federal Acquisition Streamlining Act of 1994 (P.L. 103-355; 108 Stat. 3361)) to the end of that subsection.

(2) Section 6(11) (41 U.S.C. 405(11)) is amended by striking out “small business” and inserting in lieu thereof “small businesses”.

(3) Section 18(b) (41 U.S.C. 416(b)) is amended by inserting “and” after the semicolon at the end of paragraph (5).

(4) Section 26(f)(3) (41 U.S.C. 422(f)(3)) is amended in the first sentence by striking out “Not later than 180 days after the date of enactment of this section, the Administrator” and inserting in lieu thereof “The Administrator”.

(i) OTHER LAWS.—

(1) The National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160) is amended as follows:

10 USC 2401
note.

(A) Section 126(c) (107 Stat. 1567) is amended by striking out “section 2401 of title 10, United States Code, or section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note).” and inserting in lieu thereof “section 2401 or 2401a of title 10, United States Code.”.

(B) Section 127 (107 Stat. 1568) is amended—

(i) in subsection (a), by striking out “section 2401 of title 10, United States Code, or section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note).” and inserting in lieu thereof “section 2401 or 2401a of title 10, United States Code.”; and

(ii) in subsection (e), by striking out “section 9081 of the Department of Defense Appropriations Act, 1990 (10 U.S.C. 2401 note).” and inserting in lieu thereof “section 2401a of title 10, United States Code.”.

(2) The National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189) is amended by striking out section 824.

10 USC 2325
note.

(3) Section 117 of the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456; 10 U.S.C. 2431 note) is amended by striking out subsection (c).

10 USC 2341
note.

(4) The National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100-180) is amended by striking out section 825 (10 U.S.C. 2432 note).

5 USC 571 note.

(5) Section 11 of Public Law 101-552 (5 U.S.C. 581 note) is amended by inserting “under” before “the amendments made by this Act”.

(6) The last sentence of section 6 of the Federal Power Act (16 U.S.C. 799) is repealed.

(7) Section 101(a)(11)(A) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(A)) is amended by striking out “the Act entitled ‘An Act to create a Committee on Purchases of Blind-made Products, and for other purposes’, approved June 25, 1938 (commonly known as the Wagner-O’Day Act; 41 U.S.C. 46 et seq.)” and inserting in lieu thereof “the Javits-Wagner-O’Day Act (41 U.S.C. 46 et seq.)”.

(8) The first section 5 of the Miller Act (40 U.S.C. 270a note) is redesignated as section 7 and, as so redesignated, is transferred to the end of that Act.

(9) Section 3737(g) of the Revised Statutes of the United States (41 U.S.C. 15(g)) is amended by striking out “rights of obligations” and inserting in lieu thereof “rights or obligations”.

(10) The Act of June 15, 1940 (41 U.S.C. 20a; Chapter 367; 54 Stat. 398), is repealed.

(11) The Act of November 28, 1943 (41 U.S.C. 20b; Chapter 328; 57 Stat. 592), is repealed.

(12) Section 3741 of the Revised Statutes of the United States (41 U.S.C. 22), as amended by section 6004 of Public Law 103-355 (108 Stat. 3364), is amended by striking out “No member” and inserting in lieu thereof “SEC. 3741. No Member”.

(13) Section 5152(a)(1) of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701(a)(1)) is amended by striking out “as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)” and inserting in lieu thereof “(as defined in section 4(12) of such Act (41 U.S.C. 403(12)))”.

SEC. 4322. MISCELLANEOUS AMENDMENTS TO FEDERAL ACQUISITION LAWS.

(a) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended as follows:

(1) Section 6(b) (41 U.S.C. 405(b)) is amended by striking out the second comma after “under subsection (a)” in the first sentence.

(2) Section 25(b)(2) (41 U.S.C. 421(b)(2)) is amended by striking out “Under Secretary of Defense for Acquisition” and inserting in lieu thereof “Under Secretary of Defense for Acquisition and Technology”.

(b) OTHER LAWS.—

(1) Section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking out the second comma after “Community Service”.

(2) Section 908(e) of the Defense Acquisition Improvement Act of 1986 (10 U.S.C. 2326 note) is amended by striking out “section 2325(g)” and inserting in lieu thereof “section 2326(g)”.

(3) Effective as of August 9, 1989, and as if included therein as enacted, Public Law 101–73 is amended in section 501(b)(1)(A) (103 Stat. 393) by striking out “be,” and inserting in lieu thereof “be;” in the second quoted matter therein.

(4) Section 3732(a) of the Revised Statutes of the United States (41 U.S.C. 11(a)) is amended by striking out the second comma after “quarters”.

(5) Section 2 of the Contract Disputes Act of 1978 (41 U.S.C. 601) is amended in paragraphs (3), (5), (6), and (7), by striking out “The” and inserting in lieu thereof “the”.

(6) Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) is amended in subsections (d) and (e) by inserting after “United States Code” each place it appears the following: “(as in effect on September 30, 1995)”.

(7) Section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) is amended—

(A) in subsection (a), by striking out “section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a)” and inserting in lieu thereof “section 1304 of title 31, United States Code”; and

(B) in subsection (c), by striking out “section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a)” and inserting in lieu thereof “section 1304 of title 31, United States Code.”.

Effective date.

5 USC app. 11,
11 note.

TITLE XLIV—EFFECTIVE DATES AND IMPLEMENTATION

41 USC 251 note. **SEC. 4401. EFFECTIVE DATE AND APPLICABILITY.**

(a) **EFFECTIVE DATE.**—Except as otherwise provided in this division, this division and the amendments made by this division shall take effect on the date of the enactment of this Act.

(b) **APPLICABILITY OF AMENDMENTS.**—

(1) **SOLICITATIONS, UNSOLICITED PROPOSALS, AND RELATED CONTRACTS.**—An amendment made by this division shall apply, in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any solicitation that is issued, any unsolicited proposal that is received, and any contract entered into pursuant to such a solicitation or proposal, on or after the date described in paragraph (3).

(2) **OTHER MATTERS.**—An amendment made by this division shall also apply, to the extent and in the manner prescribed in the final regulations promulgated pursuant to section 4402 to implement such amendment, with respect to any matter related to—

(A) a contract that is in effect on the date described in paragraph (3);

(B) an offer under consideration on the date described in paragraph (3); or

(C) any other proceeding or action that is ongoing on the date described in paragraph (3).

(3) **DEMARCATIION DATE.**—The date referred to in paragraphs (1) and (2) is the date specified in such final regulations. The date so specified shall be January 1, 1997, or any earlier date that is not within 30 days after the date on which such final regulations are published.

41 USC 251 note. **SEC. 4402. IMPLEMENTING REGULATIONS.**

Federal Register,
publication.

(a) **PROPOSED REVISIONS.**—Proposed revisions to the Federal Acquisition Regulation and such other proposed regulations (or revisions to existing regulations) as may be necessary to implement this Act shall be published in the Federal Register not later than 210 days after the date of the enactment of this Act.

(b) **PUBLIC COMMENT.**—The proposed regulations described in subsection (a) shall be made available for public comment for a period of not less than 60 days.

Federal Register,
publication.

(c) **FINAL REGULATIONS.**—Final regulations shall be published in the Federal Register not later than 330 days after the date of enactment of this Act.

(d) **MODIFICATIONS.**—Final regulations promulgated pursuant to this section to implement an amendment made by this Act may provide for modification of an existing contract without consideration upon the request of the contractor.

(e) **SAVINGS PROVISIONS.**—

(1) **VALIDITY OF PRIOR ACTIONS.**—Nothing in this division shall be construed to affect the validity of any action taken or any contract entered into before the date specified in the regulations pursuant to section 4401(b)(3) except to the extent and in the manner prescribed in such regulations.

(2) RENEGOTIATION AND MODIFICATION OF PREEXISTING CONTRACTS.—Except as specifically provided in this division, nothing in this division shall be construed to require the renegotiation or modification of contracts in existence on the date of the enactment of this Act.

(3) CONTINUED APPLICABILITY OF PREEXISTING LAW.—Except as otherwise provided in this division, a law amended by this division shall continue to be applied according to the provisions thereof as such law was in effect on the day before the date of the enactment of this Act until—

(A) the date specified in final regulations implementing the amendment of that law (as promulgated pursuant to this section); or

(B) if no such date is specified in regulations, January 1, 1997.

DIVISION E—INFORMATION TECHNOLOGY MANAGEMENT REFORM

Information
Technology
Management
Reform Act of
1996.
40 USC 1401
note.

SEC. 5001. SHORT TITLE.

This division may be cited as the “Information Technology Management Reform Act of 1996”.

SEC. 5002. DEFINITIONS.

40 USC 1401.

In this division:

(1) DIRECTOR.—The term “Director” means the Director of the Office of Management and Budget.

(2) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given that term in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

(3) INFORMATION TECHNOLOGY.—(A) The term “information technology”, with respect to an executive agency means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.

(B) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(C) Notwithstanding subparagraphs (A) and (B), the term “information technology” does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

(4) INFORMATION RESOURCES.—The term “information resources” has the meaning given such term in section 3502(6) of title 44, United States Code.